IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5162 of 2006
Date of decision : 16.4.2007.

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Parties Name

Pritpal Singh

..... Petitioner

vs.

Royal Regency Hotel Private Limited,
GT Road, Ludhiana

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Sumeet Mahajan, Senior Advocate with
Sh. Sham Lal Bhalla, Advocate for the petitioner

Sh. Amit Rawal, Advocate for the respondent.

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S.N. Aggarwal, J.

The petitioner is the defendant in the learned trial Court. The civil suit was filed by the respondent in the year 1999. The petitioner had appeared and had filed the written statement. Issues were framed. Thereafter, the petitioner absented from the Court proceedings and was proceeded against ex parte on 17.4.2001. He filed an application for setting aside the ex parte proceedings on 2.6.2001. The said application remained pending for quite a long time and was dismissed in default on 30.1.2004. The petitioner filed an application under Order 9 Rule 7 CPC again on 23.4.2005. But it was held as not maintainable and thereafter, he filed an application on 13.8.2005 for restoration of his application seeking setting aside of the ex parte proceedings. The said application has been dismissed by the learned

trial Court vide impugned order dated 15.2.2006.

Hence, the present petition.

The submission of the learned counsel for the petitioner was that he could not appear in the learned trial Court as he remained in jail from 16.6.2003 to 26.2.2005. Therefore, his application for setting aside of the ex parte proceedings was dismissed in his absence on 30.1.2004. Since he was in custody, therefore, application for setting aside the ex parte proceedings or for restoration of the application for setting aside the ex parte proceedings could not be filed earlier. It was further submitted by the learned counsel for the petitioner that if an opportunity is granted to the petitioner to join the proceedings, then he would take steps to get the suit decided expeditiously.

On the other hand, the learned counsel for the respondent submitted that the conduct of the petitioner reveals that he had intentionally absented from the Court proceedings and he had filed applications after a long delay. Therefore, he does not deserve any consideration and the revision petition deserves dismissal. Reliance was placed on the judgment of this Court reported as **Jinder Kaur vs. Sarabjit Singh Bajaj** 2003 (2) R.C.R. (Civil) 152.

These submissions have been considered.

The facts of the each case are different. Therefore, the law laid down in **Jinder Kaur's case** (supra) cannot be applied to the facts of the present case. In the present case, the earlier application filed by the petitioner for setting aside the ex parte proceedings remained pending in the learned trial Court for more than two years

and there is ample justification for the petitioner in not filing the application for restoration in time, as he was in jail from 16.6.2003 to 26.2.2005. Moreover, it always serves the ends of justice to allow the parties to have a contested judgment instead of closing the doors for the parties on technical grounds.

Therefore, it would be in the interest of justice to permit the petitioner to join the proceedings from the stage from where he was proceeded against ex parte.

Since the petitioner has caused inconvenience to the respondent and the witnesses already produced by him will have to be reproduced, therefore, the petitioner is burdened with costs of Rs.6,000/-/

The parties would now appear in the learned trial Court on 8.5.2007 and on that date the petitioner would make the payment of costs of Rs.6,000/- in the trial Court for onward payment to the contesting respondent-plaintiff. If the petitioner fails to make the payment, then he would not be entitled to any other opportunity for this purpose. After the payment is made, the learned trial Court shall proceed with the trial of the case.

This petition is accordingly, accepted and the orders of the ex parte proceedings are set aside.

The learned trial Court shall decide the suit expeditiously.

Dasti be given on payment of usual charges.

(S.N.Aggarwal)
Judge

16.4.2007.
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